MONTHLY

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OF THE

NATIONAL ASSOCIATION OF CREDIT MEN.

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CONTENTS.

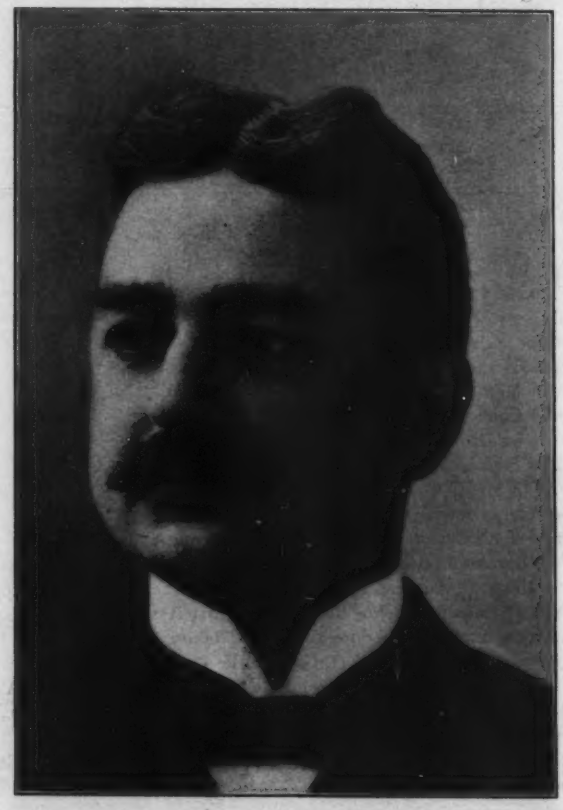
Membership List.

The Membership List will be distributed the first week in September. It is the largest list so far issued by the Association. Secretaries of the local associations are requested to promptly supply their members with copies of the list, as a sufficient number for each branch will be forwarded to the secretary, charges prepaid. Secretaries will also please report all changes in their rolls immediately, thus enabling the national office to maintain a complete and accurate list at all times.

Obituary.

Mr. Charles L. Lewando, one of the best known and beloved members of the National Association of Credit Men, departed this life August 10, 1903. Mr. Lewando attended the St. Louis Convention as a delegate from the Boston branch, and was an active and interesting figure in that gathering. Shortly after his return to Boston, he was taken ill. Rapid complications developed with fatal results.

Mr. Lewando has attended nearly all our National Conventions. He was a man of exceptionally handsome personal appearance and graceful, magnetic manners. His friends were legion. The *Weekly Bulletin*, of the Shoe & Leather Mercantile Agency, with which he was associated, gives this account of his life:



CHARLES L. LEWANDO.

"Mr. Lewando was born in Paris, France, 1864, coming to the United States with his parents in his childhood. His early years were passed in Cambridge, where he attended the public schools and fitted for Harvard College. His studies were interrupted by the death of his father, and he entered the law office of Hutchins & Wheeler, in Boston. A more active life than that of a law student having been found advisable, he connected himself with an importing lace house, and traveled as a salesman from 1882 to 1884. In January, 1885, he became connected with the National

Shoe and Leather Exchange, and was advanced rapidly until he became superintendent of the Reporting Department of its Boston office. Some years after the Exchange was incorporated, Mr. Lewando, having acquired an interest in the business, was elected treasurer of the corporation, and continued in that position until the consolidation of the Exchange with the American Shoe and Leather Association, in September, 1901, when he assumed a similar position with the new corporation, which he held up to the time of his death.

"Mr. Lewando possessed many characteristics which endeared him to his business associates and friends, while they earned for him the esteem of a wide circle of business acquaintances. He was a man of strong convictions and strict integrity, and in a position of many and varied responsibilities he won the respect of all with whom he came in contact. It is probable that few men connected in any capacity with the shoe and leather and kindred trades have enjoyed, during the last fifteen years, a wider acquaintance than Mr. Lewando, or could number in these industries a larger circle of strong personal friends.

"Mr. Lewando leaves a widow, and a son by a former marriage. He is also survived by his aged mother and five married sisters, three of whom have their homes in Chicago and two in Boston. The funeral will take place at 175 Harvard Avenue, Allston, on Friday, the 14th inst., at ten o'clock A. M. Mr. Lewando was a member of the Boston Boot and Shoe Club, the Boston Leather Associates, the Boston Credit Men's Association, Trade Club, Appalachian Mountain Club, and one or two other similar organizations.

At a special meeting of the Boston Credit Men's Association held August 12th, the following resolutions were adopted:

Whereas, Charles L. Lewando, a member of the Boston Credit Men's Association departed this life on Monday, August 10, 1903;

Therefore, be it Resolved, That in the death of our late friend and associate we have lost a valued and prominent member, and officer of the Executive Board, who by his loyalty and faithful attendance to the duties imposed upon him has been largely instrumental in extending the usefulness of this Association.

Resolved, That this Association extend to his family its deepest sympathy in their bereavement;

Resolved, That these resolutions be spread upon the records of the Association, and that a copy be sent to the family.

(Signed) BOSTON CREDIT MEN'S ASSOCIATION,
CHARLES L. BIRD, Secretary.

The Boston Leather Associates adopted the following resolution:

Whereas, we, the Boston Leather Associates, having learned with sorrow of the death of our brother member, friend and business associate, Charles L. Lewando, and whereas we desire to publicly express our grief and our sympathy with his family, and to render our tribute of esteem to his high character and business qualities.

Therefore, be it Resolved, That in the death of Charles L. Lewando we have lost a worthy member, who by his kindly spirit, unfailing courtesy and sterling honesty has endeared his memory to all who had the honor of his acquaintance.

Resolved, That these resolutions be spread upon our records, and that a copy be sent to the family of our deceased brother.

JOHN H. SELLMAN, Secretary."

To the foregoing tributes of respect the National Association of Credit Men adds its expression of esteem and sorrow, and upon the grave of its departed member, who was always faithful in life, in spirit it places with loving hand the immortelles of memory.

Georgia Bulk Law.

The Atlanta Credit Men's Association is to be heartily congratulated on the passage of a Bulk Law in Georgia. The measure was drawn by a committee of the Association, and was introduced in the House of Representatives by Hon. John M. Slaton, of Fulton County, and by Senator Park in the Senate. The committee in charge of the bill for the Atlanta Credit Men consisted of Wilmer L. Moore, Chairman; D. H. Kirkland, W. H. Kiser, H. B. Wey and H. C. Leonard. The committee exhibited great energy in enlisting the active co-operation of the business interests of Georgia.

The following concise and forcible circular was issued in behalf of the bill by the Atlanta Chamber of Commerce:

AUGUST 8, 1903.

SENATE BILL No. 192.

A LAW FOR THE GENERAL WELFARE.

DEAR SIR:—Can we ask your favorable consideration of the above bill whose purpose is to prevent the fraudulent sales of Merchandise Stocks in bulk? We believe it to be needful legislation for the following reasons:

1. The progressive citizens in every community are found among its Wholesale and Retail Merchants,—these need all the protection they can get.

2. This law has the endorsement of all the commercial bodies in every town of the State.

3. It will protect the honest trader who pays one hundred cents from the competition of dishonest, insolvent traders who sell out "to a friend," settle for a small amount, and open again with a stock whose cost looks like thirty cents.

4. It will give an additional safeguard to all commercial transactions and add no little to the credit of small dealers which to-day is an equivalent of added capital.

5. It will inure to the commercial interests of the State to have it become a law at this session.

Thanking you in advance for what you can do to give it this direction, we are, Yours, for Georgia,

ATLANTA CHAMBER OF COMMERCE,
J. K. ORR, Prest.

Below we give the complete text of the bill which was promptly signed by Governor Terrell.

House Bill 289.

A BILL

To be entitled an Act to regulate the sales of stocks of goods, wares and merchandise in bulk, to provide certain penalties in connection therewith, and for other purposes.

SECTION I. It shall be the duty of every person who shall bargain for or purchase any stock of goods, wares, or merchandise in bulk, for cash or on credit, before paying or delivering to the vendor any part of the purchase price therefor, to demand and receive from the vendor thereof, and if the vendor be a corporation, then from the managing officer or agent thereof, a written statement under oath of the names and addresses of all the creditors of said vendor, together with the amount of indebtedness due or owing, or to become due or owing, by said vendor to each of such creditors; and it shall be the duty of such vendor to furnish such statement. It shall further be the duty of said vendor to give to the vendee a

statement of his assets and liabilities and the cost price of the merchandise to be sold, said cost price to be arrived at by inventory taken at the time by the seller and purchaser.

SECTION II. Thereupon it shall be the duty of the purchaser, at least five (5) days before the completion of said purchase, or the payment therefor, to notify personally or by registered mail, each of said creditors, of the said proposed sale, the price to be paid therefor, and of the terms and conditions thereof, together with a copy of the statement of the assets and liabilities as furnished him by the vendor.

SECTION III. Whenever any person shall purchase any stock of goods, wares or merchandise in bulk, and shall pay the price or any part thereof, or execute or deliver to the vendor thereof, or to his order, or to any person for his use, any promissory note or other evidence of indebtedness for said purchase price, or any part thereof, without having first demanded and received from said vendor the statement under oath, mentioned in Section I, of this act, and without first giving to each of said creditors the notice provided for in Section II. hereof, such sale or transfer shall, as to any and all creditors of the vendor, be conclusively presumed to be fraudulent.

SECTION IV. Any vendor of a stock of goods, wares or merchandise in bulk, who shall knowingly or wilfully make or deliver, or cause to be made or delivered, any false statement or any statement of which any material portion is false, or shall fail to include the names of all his creditors in any such statement as is required in Section I. of this act, shall be guilty of misdemeanor, and upon conviction thereof shall be punished accordingly.

SECTION V. Any sale or transfer of a stock of goods, wares or merchandise out of the usual or ordinary course of the business or trade of the vendor, or whenever thereby substantially the entire business or trade theretofore conducted by the vendor shall be sold or conveyed, or attempted to be sold or conveyed, to one or more persons, shall be deemed a fraudulent transaction or transfer in bulk, in contemplation of this act; Provided, that nothing contained in this act shall apply to sales by executors, administrators, receivers, or any public officer under judicial process.

SECTION VI. Be it further enacted, that all laws or parts of laws in conflict herewith are hereby repealed.

First Gun of the New York Convention, 1904.

The New York Credit Men's Association proposes that the work incident to the next annual convention of the national organization shall be thoroughly planned and executed, and has already commenced preparations for that event. A special Committee on Convention Arrangements has been appointed as follows: R. P. Messiter, Minot Hooper & Co., Marcus M. Marks, David Marks & Sons, A. H. Watson, Watson, Porter, Giles & Co., W. E. Purdy, Chase National Bank, G. S. Mariager, Parke, Davis & Co.

It may please Mr. Mariager's friends to know that he will have entire charge of Luna Park during June, 1904.

New Associations and General Membership Work.

SAN DIEGO, CAL.

Assistant Secretary Stockwell has advised the national office by wire that his visit to San Diego resulted in the formation of a local branch. This is a very happy and creditable consummation of considerable work in San Diego during the past year by Mr. Wm. H. Preston and the national office.

Mr. Stockwell also visited and addressed the Denver Credit Men's Association late in July, and on his way to the coast spent a few days in Salt Lake City. He did much missionary work there, and before leaving was assured that there is a very friendly sentiment among the Salt Lake merchants looking to an affiliation with the national organization, and favorable action on this question may be expected at an early day.

While in San Francisco Mr. Stockwell called upon the officers of the local branch.

Mr. Stockwell will now conclude his work in Kansas, Iowa and Illinois, and there are a few cities in those States yet uncanvassed, and about October 1st will visit the Louisville Association. He will then proceed to other jobbing centers in Kentucky, West Virginia and Tennessee.

Georgia Credit Men.

A quick result of the success of the Atlanta Credit Men's Association with the Bulk Law has been a demand for a State Credit Men's Association, and Mr. D. H. Kirkland, the chairman of the Atlanta Membership Committee, has received letters from every quarter of the State urging the formation of an organization embracing all sections. The national office will co-operate, and either the Secretary-Treasurer or Assistant Secretary Stockwell will visit Georgia in this interest.

Agitating the "Country Check" Question.

The St. Louis Credit Men's Association has issued the following circular:

TO THE MERCHANTS OF ST. LOUIS:

Some months ago this Association took up the problem of *"Country Checks,"* and engaged Mr. James C. Hallock to canvass the situation in St. Louis and the territory tributary to it.

Actuated only by a desire to do justice to all concerned, and at the same time to bring about a more economical handling of checks, it instructed Mr. Hallock, who has made a life study of Clearing Houses and accomplished reforms elsewhere, to be thorough in preparing to submit a plan for the relief of our merchants.

A special committee of nine prominent merchants was appointed to confer with and advise Mr. Hallock, and upon completion of the plan to take up the matter with the Committee of Management of the St. Louis Clearing House Association.

The situation has been carefully studied, and Mr. Hallock's book,

"CLEARING OUT-OF-TOWN CHECKS"

is now being placed in the hands of the Clearing House and bank officials and of our members, besides many merchants who are not affiliated with our Association, but who are as deeply interested in the check problem.

This book reviews the situation and submits a plan which will remedy the abuse.

We desire the public to thoroughly understand the conditions before we take further action, and to this end we urge upon you the following:

First.—Read the entire book at your earliest convenience and request other officers of your firm to do so. (Public opinion tempered with a spirit of fairness will have weight with the bankers.)

Second.—Submit to your Secretary (P. O. Box 575) at once the best estimate you are able to make of the amount you pay out annually to collect

country checks (no use will be made of your name in connection with the figures).

Third.—Request your neighbors to advise Secretary Foote as to the amount they pay for collecting checks. We wish as complete statistics as are obtainable, realizing their usefulness in the effort to abolish the present arbitrary rule.

Our Special Committee will be ready to confer with the Clearing House officials as soon as the bankers have had ample opportunity to consider Mr. Hallock's plan.

Requesting your hearty co-operation and reminding you that THE TIME TO ACT IS NOW.

Very respectfully,

A. H. FOOTE, Secretary. H. V. KENT, President.

P. S.—Enclosed form is for your reply. You will be known as No. , and your name need not be signed to this or other communications on the check problem provided you will use the above number instead.

Mr. Robertson on Bookkeeping for Retail Merchants.

Mr. Victor Robertson's article on bookkeeping for retail merchants, published in the August number of the BULLETIN, has attracted wide attention, and its publication in pamphlet form suggested. Mr. Robertson is of the credit department of Messrs. J. V. Farwell Co., Chicago, Ills., and is a man of large experience.

Ohio Bulk Law Declared Unconstitutional.—Oklahoma Law Attacked.

Judge Wing, of the U. S. District Court, has decided that the Ohio Bulk Law is unconstitutional. An effort will be made at an early day to secure the opinion of a higher Court, and a favorable decision is looked for.

A case involving the constitutionality of the Oklahoma Law is in Court at the present time.

New York Credit Men's Association.

President Charles E. Meek has been honored with a renomination as President of the New York branch, and has signified his acceptance. The association is extremely fortunate in again securing Mr. Meek's services and abilities in this office (his election is assured), for he has few equals and no peers as an indefatigable, original worker. The Business Meeting's Committee, a committee which has been in existence for the past three years in the New York Association, was first suggested and organized by Mr. Meek, and to the efforts of this committee is due the many and largely attended dinners and meetings of the association. This is a feature which other associations would do well to adopt.

The regular monthly meeting of the New York Executive Committee was held at the rooms of the association on August 13. After the transaction of routine business the report of the Committee on Nominations was received and approved.

ANNUAL MEETING.

The annual meeting of the New York Association will be held September 17 at the Drug Club. Dinner at 6.30, followed by the election of officers, the transaction of regular business, and addresses by several prominent speakers.

Assistant Secretary Stockwell Visits Los Angeles.

Mr. Stockwell paid a hurried visit to Los Angeles on August 12, 1903, and was tendered a luncheon by the Los Angeles Credit Men's Association and the Wholesalers' Board of Trade.

Mr. Preston, the President of the Los Angeles branch, had been called from the city, and Mr. W. C. Kennedy acted as Chairman. Fifty prominent representatives of Los Angeles business interests were present.

At the conclusion of the luncheon, which was served by the famous "Levy," Mr. Stockwell was introduced and delivered an address on the work of the association which was accorded very favorable notice and mention by the press of Los Angeles. Among those present were the following: G. Witherspoon, W. Flatau, E. T. Levy, W. N. Hamaker, E. Lind, S. M. Newmark, H. M. Eichelberger, F. Winstanley, E. W. Wilkinberger, O. Boldenman, X. T. Prosser, H. S. Jones, N. T. Elliot, A. P. Sevain, C. Parmelee, R. D. Joyce, E. L. Hine, J. W. Lynch, G. E. Boyle, C. F. Longley, W. H. Hoegee, S. D. Murdock, P. S. Thompson, E. P. Newton, H. C. Chase, W. G. Eisenmeyer, W. F. Bosbyshell, A. C. Sumption, Newell Mathews, F. E. Frantz, C. B. White, G. Arnott, W. Arnott, M. Carlson, B. H. Dennis, H. Morris, S. B. Lewis, G. F. Barr, L. C. Scheller, W. C. Kennedy, W. C. Mushet, Secretary.

The Doctrine of Reasonable Doubt.

BY J. S. BURGER.

ADDRESS DELIVERED BEFORE THE BAR ASSOCIATION OF THE STATE OF KANSAS

The harsh and bloody criminal codes of many of earth's great nations, caused their judiciaries to adopt a rule of evidence requiring a high degree of proof before inflicting the death penalty. The Mosaic law required the judges of Israel to be certain that the accused was guilty before pronouncing the death sentence for idolatry. (Deut. XVII, 4.) Agesilaus, the Spartan, advised caution in ascertaining the truth of every criminal charge. The same rule was made a part of the Anthenian Code. (Mascardus, De Probat, Vol. I, page 87, conc. 36, n. 3.) This idea found its way into the Digest, (Dig. Lib. 48, tit. 19, leg. 5.) and the Codex, because of public expedience held the public prosecutor to the strictest proof. (Codex lib. 4, tit. 19, leg. 25.)

The early English law writers, also, must have been impressed with the necessity of being careful in ascertaining the accused's guilt in capital offenses. The Mirror says: "In doubtful cases one ought rather to save than condemn." (Mir. p. 239.) It was said by Lord Hale: "I would never convict any person of murder or manslaughter unless the facts were proved to have been done or the body found dead. I would never convict any person for stealing goods *cujusdam ignoti* merely because he could not give an account of how he came by them, unless there were due proof made that a felony was committed of those goods." (2 Hale P. C., 289, 290.)

Some writers have undertaken to elucidate the ideas above set forth and at the same time assign a reason for them in the form of a comparison. We believe that Sir Mathew Hale was the first to use this method when he said: "It is better that five guilty persons should escape unpunished than that one innocent should die." (2 Hale P. C., 290.) Blackstone when he wrote his commentaries doubles the number to go unpunished and says: "The law holds that it is better that ten guilty persons escape than that one innocent suffer." (4 Bl. 558.) By the time Mr. Starkie took

the matter up, it had grown like a mushroom, for he states it thus: "The maxim of the law is that it is better that ninety-nine (that is, an indefinite number) offenders shall escape than that one innocent man be condemned." (Starkie's Ev. eighth Am. Ed. 756.)

Mr. May (10 Am. Law Rev., 655) after an effort to prove the poor logic of these comparative statements does a legal war dance upon them in the following language: "This is the logic which the world has accepted for half a century without scoffing. Better that any number of savings banks be robbed than that one innocent man should be condemned as a burglar. Better that any number of innocent men, women and children should be way-laid, robbed, ravished and murdered by a wicked, willful and depraved malefactor than that one innocent person should be convicted and punished for the perpetration of one of this infinite multitude of crimes by an intelligent and well meaning, though mistaken, court and jury. Better any amount of crime than one mistake in a well meant endeavor to prevent it! Better for whom, we beg leave to ask? For society or for the malefactor?"

Ignorant of the scathing criticisms which Mr. May had in store for them the common law courts continued to follow this "old cautionary doctrine" which even he is bound to admit commended itself to the sound sense and humanity of the courts. They not only followed it, but as their knowledge increased and the reason for its application became plainer and more urgent they widened and extended its application. It was formerly only invoked *in favorem vitae* and necessarily often invoked because the forfeiture of life was the penalty paid for every felony and the catalogue of felonies was very extensive. "You must be cautious," said the court to the jury, "the issue is life or death to the prisoner." We find a little later, though just when, is uncertain, this "old cautionary doctrine" was extended to all crimes.

It has been said that Ireland is "rich in song and story." It has another claim to fame, for it is in the trial of the treason cases in Dublin, 1798, that we hear for the first time the Courts using the familiar phrase "reasonable doubt." We have it from McNalley, an Irishman, that: "It may also, at this day, be considered a rule of law, that if the jury entertain a reasonable doubt upon the truth of the testimony of witnesses given upon an issue they are sworn well and truly to try, they are bound to acquit." (McNalley in rules of Ev. P. C. p. 2.) In the case of Rex *v.* Finney, tried in Dublin in January, 1798, the jury are told that they "are to be satisfied beyond a probability of doubt." Again in the treason cases in Ireland in 1803 Lord Norberry told the jury to acquit upon "rational, well-founded doubt." In the case of Donnelly and others the words were, "a rational doubt," such as "rational" or "honest men may entertain." (28 How. St. Tr., 1095.) The first text writer to use language so strong after this was Phillips, who, in 1814, on page 58 of an essay published in the back of his book on evidence, says: "The jury must be distinctly persuaded of the prisoner's guilt. That the impression must be not that the prisoner is probably guilty, but that he really and absolutely is so." Then came Mr. Starkie in 1824 with this statement: "To a moral certainty to the exclusion of all reasonable doubt." Such we believe is a brief history of this phrase up to this time. It has now become accepted as the law and courts begin their futile attempts to define this term and determine the extent of its application.

Sagacious judges and text writers have often admitted the futility of attempting by definitions to make this expression clearer to the minds of jurors. In discussing this matter a judge of reputation has well observed: "If a jury can not understand their duty when told they must not convict when they have a reasonable doubt of the prisoner's guilt

or of any fact essential to prove it, they can seldom get any help from such subtilities as require a trained mind to distinguish. Jurors are presumed to have common sense and to understand common English. They are not presumed to have professional or any high degree of technical or linguistic training." Another judge of this same court employed the following words: "The language that is within the comprehension of persons of ordinary intelligence can seldom be made plainer by further definition or refining. All persons who possess the qualification of jurors know that a doubt is a fluctuation or uncertainty of mind arising from defective knowledge or of evidence, and that a doubt of the guilt of the accused honestly entertained, is a reasonable doubt."

There is danger in attempting by these subtle metaphysical paraphrases, to define the plain words "reasonable doubt." This phrase was invented by the common law judges because it could be readily understood by plain men in the jury box. These attempted explanations and definitions are very apt to impress the jury with the idea that their verdict is not to be the result of the natural impression which the evidence has made upon their minds, but of some artificial rule which the law has created for them to apply in reaching it. Recognizing this danger the courts of the commonwealths of Massachusetts and Pennsylvania have held that an instruction "that the jury should be satisfied of defendant's guilt beyond a reasonable doubt" is sufficient without further explanation. (Conn *v.* Tuttle, 12 Cush. 502. Com. *v.* Cobb, 14 Gray 57. Com. *v.* Harman, 4 Pa. St. 269.) Following out the same idea by a number of decisions the appellate court of Texas has held that it is not only not error, in instructing juries as to the term reasonable doubt, to use the language of the statute, but that is exactly what they should do, the reason being that efforts to elucidate the language of the statutes have been found unnecessary and mischievous. (Tex. Cr. Code Art. 27. Bromlet *v.* State, 21 Tex. App. 611. Ham *v.* State, 4 Tex. App. 645.) In Mickey *v.* Commonwealth (9 Bush 593) the supreme court of Kentucky puts it thus: "As it is impossible to define precisely in a few words what a reasonable doubt is, courts in instructing juries in criminal cases should make no such attempts, but merely follow the language of the code."

And yet most courts of this country in instructing juries in criminal cases have felt called upon at some time or other to explain and define these plain words, this simple expression. Judge Thompson has likened these explanations and definitions to "A sort of anarchic realm where doctrines, distinctions and subtilities seem to contend forever and hopelessly with each other like the four elements in Milton's Chaos." (11 Crim. Mag. 1.) A careful perusal of these judicial refinements and discriminations will convince any one that Judge Thompson has hit upon a happy figure of speech to illustrate the courts' treatment of the phrase "reasonable doubt."

Here are a few samples of these judicial refinements. In the celebrated Webster case (5 Cush. 295) we have the following: "What is reasonable doubt? It is a term often used, probably pretty well understood but not easily defined. It is not a mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which after the entire comparison of all the evidence leaves the minds of jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge." "Such moral certainty as convinces the minds of the tribunal as reasonable men beyond a reasonable doubt," is the language of Baron Park in Regina *v.* Sterne.

The supreme courts of California and Kansas have adopted the

following definition, saying that if courts must define the term this is as good as any: "A reasonable doubt is that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge; that is, to a certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it." We submit that this definition with its long words, obscure phrases and complex arrangement is clear as mud. It is best described as "Confusion worse confounded." If it is as good as any we extend our deepest sympathy to jurors who must be guided by some of the poorer explanations of this term.

The following is from Iowa (State *v.* Hayden, 45 Iowa 17): "If upon such consideration the minds of the jury are not firmly and abidingly satisfied of the defendant's guilt, if the conscientious judgment of the jurors wavers and oscillates, then the doubt is a reasonable one and you should acquit."

Nevada in State *v.* Nelson (11 Nev. 334) approved the following: "But in order to justify the jury in finding the defendant guilty it is not necessary that the jury should be satisfied of his guilt beyond a possibility of doubt. All that is necessary is that they should be satisfied of the defendant's guilt to a moral certainty and beyond a reasonable doubt; although they may not be entirely satisfied that the defendant and no other or different person committed the alleged offense." In Regina *v.* White (4 Foster & Fin. 383) the jury were told that "they must be satisfied beyond any reasonable doubt of the defendant's guilt. And this as a conviction created in their minds, not merely as a matter of probability. If it was only an impression of probability their duty was to acquit."

It was said in U. S. *v.* Jackson (29 Fed. 503): "A reasonable doubt is a doubt for which a good reason can be given, which reason must be based on the evidence or the want of evidence." In a previous case the same court said: "It is a doubt you may entertain, as reasonable men, after a thorough review and consideration of the evidence, a doubt for which a good reason arising from the evidence, can be given." With these instructions jurors have a weapon with which to corner a dissenting juror by demanding his reason for doubting.

Mr. Justice Brewer was convinced that the following was not too narrow: "To exclude such a doubt the evidence must be such as to produce in the minds of prudent men such certainty that they would act on the conviction without hesitation in their own most important interests." (State *v.* Kearley, 26 Kan. 77.) A like instruction was held erroneous in Indiana because men might and probably would act "in their own most important interests" upon a mere preponderance of evidence.

Mr. Justice Dillon, in State v. Ostrander, 18 Iowa 437, uses the following: "The doubt that entitles to an acquittal must be real, not captious or imaginary." But the keen judicial minds of Missouri and Texas have found sufficient error in these words to condemn each of them in succession. (Bray *v.* State, 41 Tex. App. 560. State *v.* Swain, 68 Mo.) A Michigan judge puts it thus: "A reasonable doubt is a fair doubt growing out of the testimony of the case. It is not a mere imaginary or captious or possible doubt, but a fair doubt based upon reason and common sense." Mr. Justice Campbell thought this "one of the clearest and most sensible definitions" he had "ever seen and such as to be intelligible to any jury." (Peo. *v.* Finley, 38 Mich. 482.) In Indiana and Texas common sense is not the juror's best guide. Judge Thompson's para-

phrase of this is: "That in those jurisdictions it is error for juries to exercise a mental faculty not possessed by the appellate courts." (Sisk *v.* State, 9 Tex. App. 246. Dinsmore *v.* State, 67 Ind. 306.)

Such are the definitions of this term in a few jurisdictions. Each jurisdiction has its own definition and explanation; yea, more, most jurisdictions have an assortment from which to select as occasion may require. Thus we have "to a reasonable and moral certainty," "to an abiding conviction of guilt," "to an abiding conviction to a moral certainty," "to a conviction that a man would act upon in matters of the highest concern and importance to his own interests," "such as would cause a prudent man to pause and hesitate in the graver transactions of life," "a doubt for which a good reason can be given," "not a possible or conjectural doubt," "not a may-be-so or might-be-so," "not an imaginary or captious but a real doubt," "a probability of innocence is ground for reasonable doubt," "something more than probability and less than absolute certainty." Here is an assortment sufficiently extensive to fit any case. But should you not be able to satisfy your wants from these, the thing you need can be found in the application of this doctrine.

The rule in civil cases, that the party in whose favor the evidence preponderates is entitled to the decision of the court, is not of universal application in all jurisdictions. It has been said that, "Where the commission of a crime is directly in issue in any proceeding, criminal or civil, it must be proved beyond a reasonable doubt." (Steven's dig. of Ev. Art. 94.) This was the English rule, and as to the English courts was founded upon sufficient reason. Besides the mortification and disgrace attendant upon such a verdict, there was the additional reason that the party against whom the verdict was rendered must be immediately put upon his trial for that crime without awaiting for an indictment from a grand jury.

Lord Kenyon says: "In a case of slander where the defendant justifies words which amounts to a charge of felony and proves his justification, the plaintiff may be put upon his trial by that verdict without the intervention of a grand jury," (3 Erp. 135.) Following the rule laid down above we hear Lord Denman telling the jury in Wilmett *v.* Harmer (8 C. & P. 969) that: "The first plea of the defendant is a justification of so much of the libel as imputes the crime of bigamy to the plaintiff and I think on this plea of justification you should have the same strictness of proof as on a trial for bigamy."

Without stopping to consider the reasons upon which this rule rests, a number of our states have adopted it. It has not occurred to these courts that this phrase was adopted by the common law *in favorem vitae.* That its purpose was to shield from punishment for crime until the guilt of the accused was fully proved. Nowhere in this country is a verdict of a jury in a civil case made to serve for a criminal indictment and the rule does not rest upon reason or sense in this country. Mr. Justice Sherwood says: "Wherever this doctrine has received the sanction of the courts in this country, two elements will be found in the error which has conduced to such a result: first, that of blindly following English precedents oblivious of the reason which gave them origin; second, that of confounding together and regarding as *identical* the *same kind* with the *same degree* of proof." (Dissenting opinion in Polston *v.* See, 54 Mo. 299.) This rule of requiring proof beyond a reasonable doubt has been abandoned by several states. Illinois and Florida are the only states requiring such proof in insurance cases where the defense is that the plaintiff burned the property.

Mr. Justice Burrows in Ellis *v.* Burrel, makes use of the following

language: "But we think the time to limit the application of a rule which was originally adopted *in favorem vitae* in the days of a sanguinary penal code, to cases arising on the criminal side of the docket, and no longer suffer it to obstruct or incumber the actions of juries in civil suits sounding only in damages." Mr. Justice Burrow's idea is supported by an overwhelming weight of authority. It is destined to become the universal rule. Mr. May says of this opinion (10 Am. Law Rev. 642): "It is refreshing to meet with such an opinion. It gives no uncertain sound and we hail it as signalizing the beginning of the end of a mischievous application on the civil side, of a rule of evidence, which though justifiable perhaps, in its origin within the domain of criminal law, has out lived its usefulness even there."

We can not, with all our respect for Mr. May, yield our assent to the last clause of the above quotation. We do not see why the life of an Irish traitor in 1798 was any dearer than is the life of a Kansas citizen at the present time, or why Dr. Webster should be entitled to an acquittal if his guilt was not proved beyond a reasonable doubt, any more than should Jessie Morrison under like circumstances. We believe that Mr. May is without authority for his assertion. Anyway the charity of the law and its solicitude for the safety of the innocent are such that courts continue to say: "That the presumption of innocence attends the accused throughout every state of the trial until overcome by proof beyond a reasonable doubt." It is the duty of the judge in every jurisdiction when requested so to do, and in most jurisdictions whether requested or not, to explain this presumption to the jury. The presumption of innocence is not overcome by a preponderance of evidence, or any weight of preponderant evidence, but it stands as the shield of the accused until it is overthrown by evidence possessing such a high degree of probative value as to satisfy the minds of the jury beyond a reasonable doubt that he is guilty. It is put this way in Horne *v.* State, 1 Kan. 42: "The accused may stand upon the presumption of innocence until every material allegation and every ingredient of the crime is proved."

Where the commission of the crime is denied the courts are agreed in requiring proof beyond a reasonable doubt. But when under a plea of "not guilty" the defendant sets up matter as a justification or excuse, we find the authorities divergent. Some of them treat a plea of justification or excuse as a special plea and shift the burden of proof to the defendant. The better considered cases say that a plea of "not guilty" denies every ingredient necessary to establish criminal liability and leaves the burden upon the prosecution throughout the trial. Thus we find three rules in the United States when the defense of insanity is relied upon.

A few courts, ignorant of the nature of this disease, and actuated by the early hostility that prevailed among those who little understood it, require the defendant to prove insanity beyond a reasonable doubt. New Jersey and Oregon are committed to this harsh rule. (State *v.* Spencer, 21 N. J. L. 201. State *v.* Hanson, 35 Pac. 979.)

The great weight of authority requires the defendant to establish his insanity by a preponderance of evidence. "One who sets up insanity as a defense must show its existence by a fair preponderance of evidence." (Com. *v.* Perchine, 168 Pa. St. 603.)

The following has been approved in Arkansas: "The defendant is presumed to be sane and this presumption continues until overcome by proof in the case fairly preponderating." (Williams *v.* State, 50 Ark. 511.) The above are fair samples of the rule in such cases, followed by a majority of the states.

While the last mentioned rule is sustained by the greatest number of

authorities the best considered cases require the state to sustain the burden throughout the trial. Sanity is an ingredient in crime as essential as the overt act, and if sanity is wanting there can be no crime. And if the jury entertain a reasonable doubt of the question of sanity the prisoner is entitled to the benefit of that doubt. We wish to be understood as saying in that case that the burden of proof is on the prosecution to prove beyond a reasonable doubt, whatever the defense may be. If insanity is relied on and evidence is given tending to establish that unfortunate condition of the mind and a reasonable well founded doubt is thereby raised of the sanity of the accused, every principle of justice and humanity demands that the accused shall have the benefit of the doubt." (Chief Justice Breese in Hopps *v.* Peo. 31 Ill., 385.) Mr. Justice Harlan says: "The plea of not guilty is unlike a special plea in a civil action. It is not in confession and avoidance for it is a plea that controverts every fact essential to constitute the crime charged. Upon that plea the accused may stand shielded by the presumption of innocence until it appears that he is guilty. And his guilt cannot in the very nature of things be regarded as proved, if the jury entertain a reasonable doubt from all the evidence whether he was legally capable of committing the crime." (U. S. *v.* Davis, 160 U. S. 485.) Mr. Justice Valentine says: "But if upon the whole evidence introduced upon the trial together with all the presumptions applicable to the case there should be a reasonable doubt as to whether the defendant is sane or insane he must be acquitted." (State *v.* Crawford, 11 Kan. 32.)

The courts are divided in about the same proportion as to the burden and the degree of proof required in other affirmative defenses. In New York the rule is stated thus: "The people in the first place must prove the *corpus delicti* beyond a reasonable doubt, and if the prisoner claims a justification he must take upon himself the burden of satisfying the jury by a preponderance of evidence." The doctrine in Kansas is most favorable to the prisoner. But Kansas is not alone. Some of the most respectable courts of this country support the position of Kansas, and there is no doubt but these courts have reason on their side. Judge Thompson says (11 Crim. Law Mag., 1): "It is undeniably logical that if the jury are in doubt as to the existence of any fact which is of such a nature, if true, the defendant cannot be guilty, he is entitled to an acquittal." One court said: "The jury must be satisfied beyond a reasonable doubt that Newton Crawford was the person who committed the act complained of or they must find the defendant not guilty." The same rule applies to insanity; self-defense, alibi and to malice, guarded by the same considerations, the following was held not erroneous: "If the jury believe beyond a reasonable doubt that the defendant is guilty of murder in the first or second degree, but have a doubt as to the degree of the offense, the jury will give the defendant the benefit of that doubt and find him guilty of the less offense." (State *v.* Anderson, 86 Mo. 309.)

Every member of the jury, in most jurisdictions, must be satisfied of the accused's guilt beyond a reasonable doubt. Hence the following instructions should not have been refused: "The law requires that no man be convicted of a crime until each and every one of the jury is satisfied to the conclusion of every reasonable doubt." Farther on in the same case the same court said: "If any one of the jury, after having duly considered the evidence and after having consulted with his fellow-jurymen should entertain such reasonable doubt, the jury should acquit him." (75 Ind. 1146.) This was in a case of assault and battery. A like instruction was offered and rejected in this State in the case of State *v.* Witt, 34 Kan. 488.) This our supreme court held error. Carrying out the same idea, it has been well decided that instructions should not be so framed

as to lead the jury to conclude that unless the doubt arose in the minds of all the jurors, it is something less than a reasonable doubt, and should be disregarded. (State *v.* Steward, 52 Iowa 284.)

But it is in cases supported by circumstantial evidence alone that the doctrine of reasonable doubt should receive its strictest application. Accordingly, it has been held that: "He upon whom the burden of proof rests must prove every single circumstance which is essential to the conclusion in the same manner and to the same extent as if the whole issue rested upon the proof of each individual circumstance." (Starkie's Ev. 856. Leland *v.* State, 18 Tex. App. 174.) "The evidentiary facts must all be proved and the existence of them cannot be inferred." (Burril's Cir. Ev. 733.) "The several circumstances upon which the conclusion depends must be fully established by proof. They are facts from which the main fact is to be inferred, and they are to be proved by competent evidence and by the same weight and force of evidence, as if each one was itself the fact in issue." (Com. *v.* Webster, 5 Cush., 295.) This is the language of Chief Justice Shaw in the leading case upon this subject in this country. It has been said that the state must establish every link in the chain of circumstances from which the accused's guilt is to be inferred, beyond a reasonable doubt. Other courts still adhering to the link doctrine, when the facts so arrange themselves, have concluded that in most cases the facts do not thus arrange themselves. These courts liken the incriminating circumstances to a crowd from which one or a dozen or even a greater number may depart, and yet leave the accused completely surrounded. Or again to a cable made up of an infinite number of strands, one or a number of which, may be broken, and yet the cable hold. Accordingly, in those cases they repudiate the link doctrine and say that if upon the whole evidence the jury is not convinced of the defendant's guilt beyond a reasonable doubt they must acquit. (State *v.* Glass, 5 Ore., 730. U. S. *v.* Wright, 16 Fed., 112.)

In conclusion we wish to record our humble protest against the conclusions reached by Judge Thompson in 11 Crim. Law Mag. 1, and by Mr. May in 10 Am. Law Rev., 642. We do not believe that American judges are "small men," or that our jurymen are "dolts," or that this doctrine is responsible for train robbery, ravishment and murder. We do not believe that this doctrine "stands as a lion in the way" to the punishment of crime, or that it is paralyzing our ability to cope wtih the criminal classes. A careful scrutiny of our judicial roster will show that our judges have been men of high legal attainments, equal, yea, superior to their English brothers; at least, America has never produced a Jeffries. A perusal of our jury laws will show, not only in this State, but elsewhere, that our jurymen are selected from our most intelligent citizens. And that they are men of affairs whose judgment is as accurate in most matters as is the judgment of some of our fussy law writers. We believe, and statistics prove that crime is as scarce in America as in any country in the world. These eminent legal minds, like most reformers' ideas of their pet innovations, have fallen into the belief that all the evils that afflict society would disappear if we would but abandon the doctrine of reasonable doubt. And like most reformers their hopes will never know fruition. For as long as men hold their reputation, liberty and life dear, so long will this doctrine stand as the shield of innocence and the champion of liberty.

The Law's Delay.

ADDRESS DELIVERED BY E. HOWARD MCCALEB, ESQ., OF THE NEW ORLEANS BAR, BEFORE THE LOUISIANA BAR ASSOCIATION.

In the progressive development of the human race, time has become an all-important factor. What was formerly the work of an age is now

accomplished in a few hours, or in a few days at farthest. The faculty of invention has been busy in discovering time-savers in every vocation in life, and the physical sciences have been exploited and cultivated for the purpose of utilizing them in abridging time and shortening space. We travel by steam and talk by electricity. Edison and Marconi are justly considered greater benefactors of mankind than Grant or Dewey.

Even in the learned professions, the value of time has greatly appreciated. A congregation of Twentieth Century Christians would hardly endure, as our Scotch ancestors did, a minister who, as Buckle tells us, on the authority of Burnet, was so voluble as to think nothing of preaching five or six hours on a dead stretch.

While the world moves on lightning wings, Justice still travels with a leaden hoof. The law's delay is a greater reproach to our profession today than when the Prince of Denmark, several centuries ago, classed it among the greatest "ills that flesh is heir to." Our State Constitution with biting irony declares that Justice shall be administered without unreasonable delay, a declaration, it must be admitted, "more honored in the breach than in the observance." Have we made any progress whatever in the administration of Justice in the past hundred years? Is not the law's delay, if anything, greater now than it was a century ago? When the pirogue, canoe and dug-out were used by our ancestors for water transportation, and men traveled by land in ox-carts, on foot, on horseback, a defendant was allowed ten days, with one additional day for every ten miles his residence was distant from the court house, within which to answer plaintiff's petition. This provision in our Code of Practice still exists *in ipsissimis verbis*. But it may be said that criticism is the lowest order of human intelligence. The evils are admitted, but what is the remedy?

Litigation has become a luxury, and lawsuits are diminishing with the advancing years. Let us put our finger on the weak spots in the administration of justice, and see what are the causes of the evils of which we complain.

The enormous expense of time and money required in the successful prosecution of a lawsuit deter men from resorting to the Courts for a redress of their grievances.

I once heard a great Judge express it as his deliberate opinion that in nine cases out of ten the plaintiff was in the right and ought to recover, because he first consults counsel learned in the law, lays his whole case before him, and upon his advice voluntarily institutes suit to enforce his demand. He must pay costs in advance, and even give security to the defendant for the privilege of suing him. The defendant, on the contrary, is dragged to the Temple of Justice, not by his own volition, but by compulsion. After waiting until the last day of grace, he first begins by demanding security for costs, and then interposes every conceivable exception to plaintiff's claim. Our laws are all made in the interest of the debtor class. After defendant's exceptions are tried and overruled, an answer is filed; the case put upon the issue docket, called and fixed for trial. Counsel and witnesses attend Court on the day assigned for the hearing, but generally the case is continued.

My old friend, Prof. Christian Roselius, once said that he had spent one-fourth of his life in the courthouse, waiting for his cases to be called, practicing Patience, one of the cardinal virtues.

After issue joined, witnesses die or depart from the State; commissions to take testimony of absent witnesses are necessary;—time rolls on, and the facts pass out of the memories of men. Then comes continuance after continuance. The patience of witnesses attending Court, taken away from their business avocations, is sorely tried, and after the lapse of months

or years, the case is finally heard, continued again until the testimony is written out by the stenographer for argument, taken under advisement and a decision is rendered by the trial Judge. Then comes a motion for a new trial, and then an appeal to the higher Court, where the case lingers on the docket until another year rolls by,—when it is called, heard, taken under advisement, and after the expiration of one, two, three or more months, a decision is rendered.

Then comes an application for a rehearing—time to prepare briefs in support thereof, and after one, two, three, four or five months more, the rehearing is possibly refused. And thus it is that justice delayed is almost as bad as justice denied.

A defendant should be compelled to file his answer in three days instead of ten. A plaintiff should not be required to give bond for costs, which, after all, is a great hardship upon the legal profession.

When suit is brought, upon an unconditional obligation to pay, or an account verified by plaintiff's affidavit, defendant should be required to file a sworn answer; if he files exceptions, he should make oath that they are not interposed for delay, and his attorney should certify that in his opinion they are well founded in law. As soon as filed the exceptions should go on the trial docket to be heard on the next exception day, without compelling the plaintiff to pay for fixing and notifying the defendant's counsel of the trial. The time of our trial Judges should not be taken up hearing the testimony of witnesses in all cases. Commissioners to take testimony should be appointed to aid and assist the Court, and a delay fixed for the plaintiff to take the testimony of his witnesses, a like delay for the defendant, and an additional delay for the plaintiff to adduce testimony in rebuttal. This testimony could be taken before the Commissioner, outside of Court hours, and at times convenient to counsel and witnesses, without the necessity of attending Court and being subjected to interminable continuances. After the testimony is returned into Court, the objectionable portions could be eliminated by motion to suppress.

It might be well to consider whether the appointment of standing Referees, learned in the law, to hear evidence and report their findings of fact to the Court, for its approval, amendment or rejection, as is done in the Courts of New York, would not be a material improvement upon the present procedure in the Civil District Court of this parish.

It is a constant reproach to the administration of justice in this State that the rules of evidence are practically abolished in civil trials. No matter how impertinent or how irrelevant to the issue, evidence offered may be, objection to its admissibility is uniformly met by the stereotyped ruling, "The objection goes to the effect and not to the admissibility." This is a grievous and serious error, and should not be tolerated in Courts of Justice. It unnecessarily increases the costs, encumbers the record with useless matter, prolongs the trial and diverts the attention of counsel and Court to questions not directly bearing upon the facts in controversy.

A long time ago the great Lord Kenyon said that "rules of evidence are of vast importance to all orders and degrees of men, and that our lives, our liberty and our property are concerned in the support of them."

The enormous expense to which suitors are subjected is one of the chief deterrents to litigation. In a large majority of cases the fees of the clerk, sheriff, stenographer, notary, and appraisers far exceed the compensation of the attorneys. In fact, litigation in our Courts is mainly for the benefit of these officials. Our fee bill exceeds that of any other State in the American Union. Is it surprising that litigation is rapidly decreasing? That rational men prefer to submit their differences to boards of arbitration rather than resort to protracted, expensive and uncertain lawsuits? And yet a great Judge, one of the first apostles of Louisiana jurisprudence,

once said that "justice should be so cheap as to go a-begging at every man's door."

There are too many holidays and too long vacations—too much play and not enough work; too many hours of rest and not a sufficient time devoted to labor by those connected with our Courts. Louisiana has more holidays than any of her sister States, and at every recurring session of the Legislature, the number, under first one pretext and then another, is increased. These numerous holidays, while wholly unnecessary, create idleness and indolence, and give to the stranger within our gates false ideas of the character of our people. They infer that we are not serious, but frivolous; too much given to pleasure, and, like the Mexicans, longing for holidays and amusements—cock-fights and bull fights, horse races and baseball. One of our distinguished visitors once remarked: "The people of New Orleans are peculiar. They are always on parade; one-half of the population is tramping the streets in procession, and the other half looking at them from the sidewalks."

It is time to call a halt in the creation of legal holidays, and instead of increasing, the Legislature should diminish the number by one-half.

Our Constitution provides that the District Courts in the country parishes shall be in continual session during ten months of the year. (Article 117.) The Court term of the Court of Appeal of the Parish of Orleans lasts from the second Monday of October until the end of the month of June. (Article 131.) The Civil District Court by Act 4 of 1896 is in session from the 15th of October to the end of June, with a mid-winter vacation from Christmas to the second of January. Each of the Criminal District Court Judges is given an annual vacation of three months. (Act 98 of 1880.) The term of the Supreme Court is from the first Monday in November to the end of June. (Article 88.)

These laws demonstrate how utterly valueless is constitutional legislation, and it would be difficult to make one understand why the District Judges in the country parishes should be continually at work for ten months in the year, and only have two months' vacation, while their brothers in the city have three and a half months' vacation annually, and the Supreme Court Judges four months for rest and recreation.

These vacations, both of the Supreme Court and of the District Courts and Court of Appeal of New Orleans, are entirely too long. Two months' rest annually ought to be sufficient for any Judge. It seems that in legislating upon the subject of the terms of the Supreme Court the Constitutional Convention was attempting to imitate the terms of the Supreme Court of the United States, which begin on the second Monday in October and usually end about the middle of May, following.

I once inquired of one of the great Judges of that august tribunal, the late Mr. Justice Field, why it was that the Court took such long vacations, and his reply was: "In order to enable the Judges to go down upon their respective circuits, to which they are assigned—to preside over jury trials, and hear equity cases in the first instance. That this was necessary in order to keep the Court in touch with the bar and the people, and that some of the best opinions ever delivered by any of the Justices of the Supreme Court of the United States were rendered while on the circuit."

Our Supreme Court Judges have no such duties to perform, and, therefore, there was no excuse whatever for the last Constitutional Convention fixing the terms of that Court. Be it said, however, to the honor of the members of the highest tribunal in our State, that notwithstanding this provision, they assemble here several times during vacation and decide many applications for writs of review and *certiorari*, although they are not strictly compelled so to do.

It is a matter of regret that the ancient and time-honored institution,

whose beginning extends far back in the dawn of Saxon civilization, regarded by our ancestors as one of the great bulwarks of English liberty, universally recognized as a sacred right by Magna Charta, trial by jury—has grown into innocuous desuetude in Louisiana, and jury trials in civil cases are of rare occurrence in our Courts.

The reason that trials by jury are not more frequently resorted to by counsel is because verdicts in these days, even on questions of fact, are usually disregarded by our appellate tribunals. The Constitution of the United States, Article 7 of the Amendments proposed and adopted in 1791, provides: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

While it is true that this Article applies exclusively to trials by jury in the Federal Courts, it furnishes a salutary and wholesome rule which should be respected and followed by our State tribunals. Facts found by a jury should not be disturbed by the Courts, except for manifest error of law, and then only by awarding new trials as at the common law.

Apart from the recognized fact that trial by jury is the safest and most expeditious way of determining differences between men, the system itself is an essential part of our political institutions—admitting the people to an active participation in the adminstration of justice, training them in their civil rights, teaching them how to weigh and decide differences between their fellows, and teaching the members of the legal profession true eloquence—how to touch the hearts and convince the minds of men. As a public instructor the Court House with the trial by jury is as essential to the intellectual improvement of our adult citizens, as the teacher and school house are for our minor children. They are both equally necessary to dispel ignorance and diminish illiteracy.

Then, again, jury trials give us that great desideratum—speedy justice—for, as was truly said by our present distinguished Ambassador to the Court of St. James, Mr. Rufus Choate, in his address before the American Bar Association in 1898, on the Trial by Jury: "There is nothing in the whole realm of litigation so sharp, short and decisive as the ordinary jury trial."

As a matter of course, jury trials should not be granted in all cases, but only in those arising out of offences and *quasi*-offences, claims on negotiable instruments, policies of insurance, both life and fire, expropriation proceedings and in suits growing out of the contract of sale, lease, deposit, mandate, suretyship and pledge. It goes without saying that all probate proceedings, matters relating to minors, and their tutorship, interdicted persons, successions, fixing of the limits of land, partitions, the probate and interpretation of wills, revocatory actions, accounting and suits for specific performance of contracts, the appointment of receivers to corporations, settlement of partnership affairs and foreclosure of mortgages, should be relegated exclusively to Judges learned in the law, without the intervention of juries.

Where the facts are submitted to a jury for determination, no appeal should be allowed except on questions of law.

In all cases of appeal, the original record with copies of the minute entries, and an inventory of the papers should be transmitted to the Supreme Court. A case should be made and printed by the appellant under the supervision of the Clerk of the Supreme Court, containing such a complete abstract or abridgment of the record as may be necessary to a full understanding of the questions presented for decision. The appellee, if dissatisfied, where the printed case is incomplete, should within ten days after receiving the printed record, be required to deliver to the attorney

of the appellant, a supplemental case, with references to the record, making corrections and filing copies thereof for the use of the Court. On this subject the rules of the Supreme Court of Wisconsin are instructive. In this way the cost of printing would not greatly exceed the cost now exacted for preparing the transcript in the lower Court. It would enable each Justice of the Supreme Court to readily ascertain the pleadings and facts, without delving into manuscript; it would abbreviate the work of counsel in arguing their cases and preparing briefs. Almost all the Courts of last resort in our sister States, and also the Supreme Court and Circuit Court of Appeals of the United States require the records to be printed and our Supreme Court should keep up with the procession, and follow their example.

In lieu of the various remedies which have been advocated to relieve the Supreme Court of its crowded docket, and reduce the labor of our over-worked Justices, I would suggest the creation of an independent tribunal, to be styled, "The Court of Errors of Louisiana," to be composed of three Judges learned in the law; and vested with exclusive jurisdiction over all appeals in criminal cases and appeals in all cases arising out of offences and *quasi*-offences, where the amount in dispute exceeds two thousand dollars. This tribunal would greatly diminish the work of our Supreme Court Justices and would, I am convinced, afford the desired relief.

If Job had lived in these days of the stenographer, typewriter and printing press, and been a member of the legal profession, he would never have exclaimed, "Oh, that my adversary had written a book!" but would rather have agreed with the Preacher, "That of the making of many books there is no end, and much study is a weariness of the flesh." Long decisions are the greatest affliction of which the members of the bar complain. The *cacoethes scribendi* is a judicial eccentricity. The Telephone cases (126 U. S.) consume an entire volume of the United States Supreme Court Reports, and the more recent case of DeLima *vs.* Bidwell (182 U. S.) extends over two hundred and twenty pages of solid printed matter. With such eminent examples can it be wondered at that State tribunals of last resort too often prolong unnecessarily their decisions? I once inquired of an eminent Justice of our Supreme Court why he did not write shorter opinions, and his laconic answer was, "I have not the time." The appellate Courts compel the bar to follow certain fixed rules in the preparation of their briefs. I hope it may not be considered impertinent to suggest a formula for decisions, in order to shorten the opinions of our Judges by the excision of much unnecessary matter, in reaching their conclusions,

Let their opinions contain:

1st: A clear, concise statement of the nature and character of the case, omitting a recital of the pleadings.

2nd: Findings of fact, without recapitulating the evidence of any portion thereof.

3rd: Conclusions of law reached by the Court, referring to the authorities, without quoting from decisions, commentaries or text-books, for Judges should decide cases, not argue them.

4th: and lastly, the judgment or decree of the Court. This is substantially the method pursued by the Court of Cassation, the greatest tribunal in the world, and justly renowned for the brevity and perspicuity of its decisions.

I have thus briefly alluded to a few of the many reforms which ought to be inaugurated in the administration of justice in this State, for the purpose of obviating the law's delay. Had I the time and the inclination, I think that I could demonstrate that in criminal matters, one-half of the

lawlessness and nine-tenths of the lynchings in this country are likewise attributable to the law's delay.

If I shall have awakened in your minds an interest in these things the task assigned to me on this occasion will have proved more than a grateful one.

In the early part of the last century, the administration of justice in the English Courts had grown into such disfavor, that popular clamor drove the leaders in Parliament to an investigation of the evils prevailing in the Chancery, Law and Criminal Courts.

The great novelist, Charles Dickens, then an attorney's office boy at Gray's Inn, and subsequently a reporter of law cases at the Doctor's Commons, many years afterwards graphically recounts in Bleak House, the curse of the Chancery Court, and the dark shadow it threw across the lives of litigants, over whose portals ought to have been written Dante's awful inscription on the Gates of Hell, "He who enters here leaves hope behind." In this sad condition of affairs, Michael Angelo Taylor, Mr. Williams and others finally succeeded in having a commission appointed to inquire into the administration of justice in the Court of Chancery. In 1828, Lord Brougham exposed the deplorable abuses in the Courts of Common Law. The great judicial Reform Bill was enacted into law by Parliament, and ever since the law's delay is an unknown quantity in the English Courts.

Let us follow in the footsteps of these illustrious reformers, who have left for themselves monuments more lasting than brass, more durable than marble—a praise not unworthy of a great prince, and to which the present administration of justice in Louisiana, we can well exclaim in the words of Lord Brougham, in his memorable speech before the House of Commons: "It was the boast of Augustus, and it formed part of the glory in which his early perfidies are lost, that he found Rome of brick and left it marble—a praise not unworthy of a great prince, and to which the present reign also has its claims. But how much nobler will be the sovereign's boast, when he shall have it to say that he found law dear and left it cheap; found it a sealed book, left it a living letter; found it the patrimony of the rich, left it the inheritance of the poor; found it the two-edged sword of craft and oppression, left it the staff of honesty and shield of innocence."

The Commercial Lawyer.

AN ADDRESS DELIVERED BEFORE THE COMMERCIAL LAW LEAGUE OF AMERICA, MACKINAC ISLAND, MICHIGAN, JULY 28, 1903, BY GEO. H. CARR, OF THE DES MOINES BAR.

Mr. President, Ladies and Gentlemen: The lawyer is a product of civilization. Unlike the merchant, the agriculturalist, the doctor and the priest, he has no prototype among primitive men. It is the profession and business of the lawyer to counsel and advise those by whom he is employed as to their personal and property rights under the established law of the land and to present the cause of his client to the tribunal regularly constituted to determine and enforce rights and to detect and redress wrongs.

It is manifest that in a state of society where there is no established law and no tribunal charged with the duty of enforcing rights and redressing wrongs, the lawyer would have no place. When, however, mankind had reached that stage in his development from barbarism towards the high state of civilization which he has achieved when governments were instituted from which might emanate "rules of civil conduct commending what is right and prohibiting what is wrong," and under whose authority

courts were established and empowered to enforce these rules, then the lawyer was evolved from the necessities of society.

So important to the welfare and happiness of mankind were the laws by which his conduct as a member of that social system was regulated, and so dependent were his rights of person and property upon the honest and intelligent administration of those laws, that a demand was created for men whose lives were devoted to the study of those principles of right and justice by which the affairs of civilized men must be regulated, and who possessed the ability to apply those principles in effectuating justice between litigants in the numerous controversies which must necessarily arise. That the demand for such men has been abundantly supplied, our enlightened system of jurisprudence, "the accumulated wisdom of the ages," demonstrates.

As there pass in mental review such names as Mansfield, Eldon, Holt, Parker, Marshall, Story and Kent, notable examples of a large class of eminent jurists, both English and American, whose enlightened sense of justice and profound knowledge of the law has been largely accountable for the development of a system of jurisprudence, the most enlightened, just and equitable ever adduced by human reason from the immutable principles of natural justice, and to whose official probity and evenhanded administration of justice is due that respect for the courts and their decrees which is universally accorded by our people, we are deeply impressed with the magnitude of the work they accomplished.

Not alone, however, to the lawyer on the bench is due the credit for the development of a body of laws so well adapted for the government of a free people, for the lawyer at the bar has been largely influential in molding the opinions that have authoritatively declared the law.

Again, the written law of the land, State and Federal, statutory and fundamental, is principally the work of the lawyer legislator. Upon the bench, at the bar, and in legislative bodies, the lawyer has done his work, and done it well. Society at large owes to the legal profession a debt of gratitude which can only be measured by the value of good laws, honestly and ably administered.

The lawyer has never been a potent factor in shaping the course of men along industrial lines nor in stimulating business enterprises. His work has been to apply to the affairs of men the rule which is the standard of what the law deems right and to compel men to conform their actions to the law. In doing his work, however, he has always kept well abreast of the times. While he has never led the procession, neither has he lagged behind. Industrial and economic changes have found him ready to apply old and settled principles to new conditions. During the past century, conflicting land grants, careless surveys, imperfectly kept records, defective conveyances, tax sales, and other causes, led to a large amount of litigation involving rights in real property, and in consequence the real estate lawyer became a very useful, respectable and learned member of the legal profession. But the real estate lawyer as a specialist has done his work, and with the nineteenth century has passed into history. For profound knowledge of the fundamental principles of the law as administered by the courts of equity, for breadth of view, close analysis, and skill in practice, he was unsurpassed.

The settlement of land titles and the consequent falling off in real estate litigation has, fortunately for the members of the legal profession, not left them without subjects to which they may profitably devote special study and attention. Out of new economic conditions have grown questions of great importance, calling forth the best efforts of the lawyer for their solution. The legal profession has been quick to respond to the calls made upon it by these new conditions. The real estate lawyer of the past genera-

tion has been succeeded by the corporation lawyer, the insurance lawyer, the railroad lawyer and the commercial lawyer. These later day specialists have little cause to fear that future conditions will injuriously affect their business. Some of them, like the real estate specialist, may have their day, but there is no present indication pointing to such a result.

However that may be, there is at least one of the above named classes to whom conditions, both present and prospective, should bring the most comforting assurances that for his services there will be a permanent and constantly increasing demand. I need scarcely say that I refer to the subject of this address, the commercial lawyer.

Commercial activity has developed him and will continue to nourish him as an indispensable aid to commercial enterprise. The growth of the world's commerce since the Arab, the first land trader, led his slowly moving but richly freighted caravans across the deserts of Asia and Africa, and the Phœnicians launched their frail barks on the waters of the Mediterranean, has, except when interrupted by war or pestilence, gone steadily and rapidly on. During the nineteenth century there has been an extension of the commercial transactions of mankind unparallelled in the world's history. We are interested in knowing whether this enormous growth in commercial relations is temporary, permanent, or but the beginning of a still more stupendous development in the future. A glance at some of the principal causes which have in recent years given such a tremendous impetus to trade will furnish a satisfactory answer to the inquiry.

One of these causes is found in the white man's more extended occupation of the earth's surface, in peopling the North American continent Australia, South Africa and the islands of the ocean. Another cause is found in the adoption of commercial treaties and the establishment of trade relations between the nations of the west and those of the far east, resulting in bringing China and Japan into the sisterhood of commercial nations. Still another is found in the use of steam in both land and water transportation and of electricity as a means of communication. But in looking for first causes of commercial development, perhaps the most potent of all is found in the growth of population and in the acquiring of wealth, resulting in the producing and consuming capacity of the people of the world, of all the various articles of commerce, being greatly augmented. There is not one of these causes of commercial growth that is temporary, or even limited, except colonization, and even that, in the sense of fully developing the resources of the inhabited portion of the globe, is far from reaching the maximum. So far from being temporary, the causes of recent commercial expansion are but in the primary stage of their development.

It has been stated upon high authority that "the nineteenth century witnessed an extension in the commercial relations of mankind to which there is no parallel in history," but, so far as human foresight can discern, the twentieth century is destined to witness a commercial expansion of such stupendous magnitude as to make that of the past century appear but its harbinger.

Referring more especially to the growth of commerce in the United States, we find that it has more than kept pace with that in the world at large. In 1791 the aggregate exports and imports of the United States were 43 million dollars; while during the fiscal year ending June 30, 1900, they reached the enormous total of $2,244,000,000. As indicating the extent of the increase in the production of manufactured articles, it is noted that while in 1880 the manufactured exports were one-sixth as large as those of agricultural, in 1900 they were over one-half as large.

The large majority of commercial lawyers are, however, more largely concerned with the domestic trade of the country than with its international

commerce. Here again there is no reason to look to the future with apprehension. The producing and consuming power of the American people is rapidly increasing. Speaking of them as individuals, that which they consume they only to a very limited extent produce, and that which they produce is principally consumed by others. The country is territorially of large extent and of great diversity of products, natural and manufactured, and its resources are practically unlimited and inexhaustible. The facilities for transportation and communication which, during the past century, have been so wonderfully developed, are being extended and improved. All this means trade, and trade in vast and constantly increasing volume.

In the process of evolution, mankind has successively passed through the age of stone, of bronze and of iron. He has now entered upon another age which ought not to be characterized by reference to some kind of matter. It is the age of commerce. It is an age in which the commercial lawyer must occupy a prominent position. Sensible as the good lawyer ever is to the duties which his business imposes upon him, and painstaking and faithful in their discharge, the question which inevitably presents itself to the commercial lawyer, collectively and individually, is how he may best serve the vast interests entrusted to his care.

I beg leave to submit for your consideration some suggestions along the lines indicated. I do not hope to say anything new. If I say anything wise, it will be the wisdom of experiences upon which I have no monopoly.

Bouvier defines commercial law as a phrase employed to denote those branches of the law which relate to the rights of property and relations of persons engaged in commerce. Now we have in this country forty-nine States and Territories, all having local laws upon some of the various branches of commercial law, and lying all along our northern border a great country with which we are connected by ties of kinship and to which we are closely allied by mutual interest and mutual respect and esteem, and with which we must consequently always have extensive trade relations. Merchants and manufacturers wherever they may reside, find their trade relations extending into many or all of these various States and Territories, and to the Provinces of Canada, and hence, commercial law, by reason of its application to inter-State and inter-national commercial transactions, is more cosmopolitan than any other branch of municipal law. As administered in one State or one country, it must of necessity deal with subjects in other jurisdictions, and the merchant frequently finds that the rule of law which regulates his transactions in one place is not the rule by which the same transactions would be governed in another place. Such conflict of laws is more or less detrimental to commercial expansion. A uniform system of commercial law throughout the several States is of the highest importance to the interests which we as commercial lawyers serve. I suggest, therefore, that herein lies a duty which our position imposes upon us, and in the discharge of which we may do much to better adapt the great fundamental principles of the law to the needs of the whole country and of the age in which we live.

The recent adoption of the "Negotiable Instruments Law" by many of the States is a striking example of what may be accomplished in the direction of uniform legislation. In 1895, there was held a conference of lawyers representing various States of the Union, which resulted in the preparation of a codification of the existing laws relating to commercial paper. This law is based upon the Bills of Exchange Act enacted by the English Parliament of 1882. One of the objects to be achieved was to produce uniformity in this important branch of commercial law. In 1897, the law as drafted by Mr. John J. Crawford, of the New York Bar, was adopted by the States of New York, Colorado and Florida. Since then it has been adopted in its entirety or with but slight changes by

seventeen other States and the District of Columbia. It will, doubtless, in the not distant future, be incorporated into the written law of every State of the Union. The advantages to the commercial interests of the nation resulting from the adoption of this law can scarcely be overestimated.

There are other branches of commercial law in which uniformity is nearly or quite as important as in the law of negotiable instruments. It is not my purpose to enter into a detailed discussion of this subject, and I merely suggest the following as some of the branches of commercial law in which uniformity would be a great blessing—laws relating to the execution, acknowledgment and recording of instruments of conveyance, and insolvent laws.

The time may not be ripe for action by this league in respect to securing uniformity of commercial laws, but consideration and discussion of the subject may result in action later that will be of substantial benefit to the commercial interests of the country.

The commercial lawyer has for his field of operation one of the most arduous, exacting and least sentimental in the entire range of law practice. He must be thoroughly familiar with the whole wide range of commercial law; he must not only know what the rights of his clients are, but, what is of equal importance, he must know how to enforce and protect them. But the lawyer who simply knows the law does not meet the requirements of this business age. His knowledge of the law will enable him to advise his client as to his legal rights and the means by which they may be secured, but this only partially meets the requirements. He must know men. He must be versed not only in business law, but in the laws of business. He should be to his client not only a legal but, in a restricted sense, a business advisor. Formerly men rarely consulted a lawyer until after they got into trouble. Latterly business men are coming to understand that the best time to consult a lawyer is before the trouble begins. It is directory advice which he seeks. In such cases, the most useful counsellor is the man who not only has a profound knowledge of the law, but also a keen insight into affairs.

Again, he must be painstaking and faithful in the discharge of every duty. He must be prompt, methodical, and observant of details, and above all, he must be trustworthy, honest and upright in all his dealings, and true to the interest by which he is employed. In a word, the same laws of business by the observance of which the business man attains success must regulate the practice of the business man's lawyer. On the other hand, he may, without fear of failure in his chosen profession, dispense with some of those qualifications which in former years were, and in some branches of the practice still are, regarded as essentials. For example, he need not cultivate those faculties which will enable him to stir the sensibilities of a jury by "telling them of the orphans' moans, the base oppressor's sneers, and piling pathos mountain deep, move all the court to tears." Neither need he cultivate those powers which will enable him to perform the functions of the "spellbinder" during political campaigns. In fact, I believe it is common experience that the practice of politics, at least to any considerable extent, and of commercial law do not go well together.

However, as arduous and exacting as the practice of commercial law must be admitted to be, it is not without its pleasant features and its compensations. The clientage is composed of business men and every lawyer in general practice knows how desirable such a clientage is. To satisfy this client it is not absolutely essential, as is the case with another class of clients, that success crown his efforts. While success brings commendation, the lack of it when not due to negligence or inefficiency

does not bring criticism. Good service is what the business man demands of his lawyer, and he possesses the intelligence and discernment which enables him to judge of that independent of results. The ordinary client has but one standard by which to measure his lawyer, viz., results. The business man measures his lawyer by the kind of service he renders, hence the business man's lawyer has it within his power to always have the commendation of his client, and nothing brings more satisfaction to the practicing lawyer.

Then, too, there is a stability about a clientage of business men that brings to the lawyer assurances of steady and permanent employment. Numerous business transactions create a constant demand for legal services, and the business man never changes his lawyer except for good cause. His advice is sought in all matters of importance. A concise and business-like presentation of the matter in hand is submitted and the advice given readily comprehended and intelligently followed. All things considered, in spite of the arduous and exacting nature of the commercial lawyer's practice, no branch of the law practice is more pleasant and satisfactory.

The merchant and manufacturer, extending their commercial transactions over a wide extent of territory, frequently require the service of a lawyer at a place remote from their domicile, hence it is that the clientage of the commercial lawyer is to a considerable extent made up of those with whom he transacts business by correspondence. I am of the opinion that in his dealings with this class of clients, it is his duty to exercise those qualities which I have heretofore mentioned to the utmost extent. In the first place, there is a peculiar trust reposed in him by those who frequently do not know him personally, and who are not in a position to personally observe and supervise the efforts he is making in their behalf. Large interests are entrusted entirely to his care. The reliance of his client upon him is absolute. If he neglects his duty, exercises bad judgment, or makes a mistake, his client must suffer, and not infrequently the loss will be very great. He is in a position to do his client a great injury by unfaithfulness to the trust reposed in him.

There are few positions in life where greater trust is reposed than that which a foreign client reposes in his lawyer in matters of importance. While the client places his confidence in his lawyer, he is not free from anxiety concerning results. This is a fact which the lawyer sometimes fails to fully appreciate, and as a result, is to a certain extent negligent of the correspondence by which the client should be kept advised as to what is transpiring. One of the most frequent annoyances which the client or the forwarding attorney meets with is the failure upon the part of the lawyer to whom the business has been entrusted to report from time to time as to the situation. In my own experience I have known lawyers to whom business has been forwarded to fail to even acknowledge its receipt. Voluntary reports as the situation develops or new complications arise are desirable and always highly appreciated, but the failure to respond promptly when reports are called for is inexcusable and calculated to create a well-founded apprehension as to the faithfulness or efficiency of the lawyer who is guilty of such gross neglect of one of the by no means unimportant duties which his position imposes upon him. There is no more efficient means in building up a foreign commercial practice than by conducting a prompt and painstaking correspondence, and no surer means of destroying an established practice than by neglecting it. In this class of practice there are two cardinal principles which should always be observed, viz.: Give to your client the best service of which you are capable and keep him informed of what you are doing.

The commercial lawyer, more than any other practitioner, is called upon to advise his client as to when a resort to proceedings in the courts is advisable. A client wants results, and he depends very largely upon his lawyer to advise as to the necessity and wisdom of resorting to the courts for the enforcement of his rights. Here is frequently presented an opportunity for the display of the nicest judgment and the keenest insight. The law will tell the lawyer how to proceed, but it will not tell him when the resort to extreme measures is advisable. It is in such situations as these that knowledge of men and of affairs is indispensable. Many a claim has been lost with a large cost bill added by hasty and ill-advised action which might have been saved by a more conservative course; while on the other hand, many a claim has been lost by a failure to take action which more prompt and vigorous methods would have saved.

In meeting emergencies of the kind under consideration, the lawyer may make a mistake which no human judgment or foresight could guard against, but there is one thing which he can always do and which his duty to his client imperatively requires of him, and that is, to make the interests of his client paramount to his own, or, as the Code of Iowa admirably puts it in defining the duties of attorneys and counsellors: "Never to encourage either the commencement or the continuance of any action or proceeding through any motive of passion or interest." By a strict observance of this principle, he will be less likely to get his client into difficulties which ought to have been avoided.

While the lawyer owes to his client the duty of giving to him the best service of which he is capable, there is a limitation placed upon that which he shall do in the discharge of that duty, by the still higher duty which he owes to society. When he undertakes to serve his client, he takes upon himself no obligation to do aught in the interest of his client which to his enlightened sense of right and justice appears wrong, illegal or unjust. I am aware that there are lawyers of ability and some degree of respectable standing in the profession who act upon the principle that anything is justifiable to accomplish results for their client that does not carry with it a term in the penitentiary. The zeal of such men may be commendable, but it is badly directed. In my judgment, such lawyers are enemies to society and a disgrace to the profession to which they belong. If I were a client, I would not employ such a lawyer because, independent of any other consideration, I would believe that the very qualities of mind and heart that make it possible for him to resort to anything to win for his client, would be likely to induce him to rob his clients of the fruits of his victory. Whenever a client requires of his lawyer the doing of that which is illegal, unjust or oppressive, then the duty which he owes to society rises superior to that which he owes to his client, and, if he is a just lawyer and an honorable man, he will refuse to obtain results for his client by such means. By all just, honorable and legal means a lawyer should strive to serve his client, but the cause which can only be maintained by means that are unjust, dishonorable or illegal will, by the lawyer who is a worthy member of the honorable profession to which he belongs, be promptly abandoned. A large acquaintance among lawyers extending over a quarter of a century enables me to say to-day with the utmost assurance that with remarkably few exceptions the members of our profession are men of that character, such, with strong heart and head and hand, are benefactors to the land.

Among commercial lawyers there is occasionally manifested a disposition to oppress the debtor. In resorting to means to collect that which is due his client, he does not hesitate to cause loss or sacrifice to the person upon whom the obligation to pay rests. In this manner he some-

times permits himself to be an instrument of a great and perhaps irreparable wrong which might have been avoided by the exercise of good judgment and a degree of forbearance on his part, without loss to his client or in any manner endangering his interests. Such a course as this is to be deplored for it results in loss without any corresponding benefit. The practice of our profession does not require that we should become human vampires or oppressors of the unfortunate. We can serve the interests of our clients efficiently and yet deal justly with all men. Indeed, viewing the matter broadly, I am confident that it is only by dealing justly with all men that the commercial lawyer can best serve the interests of his clients.

When civil governments were instituted among men the tendency towards despotism was well nigh irresistible, threatening for a time the complete subversion of individual liberty. Then began the long struggle culminating finally in according to the individual the largest measure of liberty consistent with a due regard for the rights of others. Throughout the entire period of that protracted struggle, the lawyer bore a prominent part. One needs but to recall the "majestic roll" of Cicero's oratory as he plead for human rights in the Roman Forum, the impassioned eloquence of Erskine in his advocacy of the cause of personal liberty in the celebrated libel and constructive treason cases, and the burning words declaratory of the rights of man which flowed from Jefferson's mighty pen, to be convinced of the truth of this assertion. But, among the Anglo-Saxon races at least, personal liberty has become firmly established and personal rights clearly defined. The lawyer of the present generation finds his sphere of usefulness in another though scarcely less important field. The rights of property in this age of commercial and industrial activity, and the rights of persons, natural and artificial, in all their various economic relations afford the lawyer of to-day an opportunity for the expenditure of his time and talents in a work of absorbing interest and of vast importance. He is the architect under whose direction great commercial enterprises are constructed in conformity with recognized legal principles; he is the guide, the pilot who marks out the course which they must follow to avoid falling under the ban of the law. Withdraw his guiding hand, dispense with his counsel and advice, and disaster will be the inevitable result. The complexity of commercial relations and the immense volume of mercantile transactions has so extended the application of legal principles that there has been developed a body of laws so intricate and voluminous that their mastery would have appalled the lawyer of the past generation.

The modern lawyer is proving himself equal to the increasing demands which modern society is laying upon him. He is a riper scholar, a harder worker, and in the aggregate a better man than his predecessor. The future presents to the commercial lawyer boundless opportunities. He may grasp them if he will. As competition in the industrial world constantly calls for improved methods, so the growing importance of the lawyer in the business world calls for a higher and still higher standard of professional excellence and efficiency. That the profession is alive to the situation, the existence of this organization proves. This great and growing body of high class commercial lawyers is destined to accomplish a great work in placing upon a still higher level the professional standard which its membership is expected to attain and maintain. Let the members of this League, having supplied themselves with the most effective armor, offensive and defensive, go forth to battle only in the cause of truth and justice, and, like the illustrious knight of old bear upon their shields the motto, "Without fear and without reproach."

Salesmanship.

BY L. D. VOGEL, OF THE CHARTER OAK STOVE & RANGE COMPANY, ST. LOUIS, MEMBER OF THE ST. LOUIS CREDIT MEN'S ASSOCIATION.

The purpose of this meeting is, as I understand it, to become better acquainted through personal contact and social intercourse, to discuss and, if possible, remove such obstacles as have proven impediments to satisfactory and lucrative business. It seems to me these gatherings of Southern hardware jobbers and the manufacturers and their representatives should be regarded by all in the light of a reunion of a business family, of which we all are members. If we can impress upon each other the fact that our interests are mutual, we will feel when we say good-by that the time has not only been pleasantly but well spent. Feeling, as I do, that it is incumbent upon each of us to at least make an effort toward contributing some food for thought, I will venture on a subject that will, I hope, interest all of you.

It will perhaps suggest itself to you that an office man, such as I am and always have been, should choose some subject which experience would qualify him better to discuss. If any apology is needed for my treading on this ground I want to make it right now, so that I may at least have your unbiased attention and consideration.

I recognize and appreciate the fact that this gathering embraces men fitted by nature and schooled by experience for salesmanship, and others who are proprietors and sales managers, men of judgment, who, through their contact with salesmen, are well posted on the question of what constitutes a good one. And I am not egotistic enough to presume that I can tell the salesmen anything new about their avocation, or to impart any information to those who engage salesmen that will be of substantial use to them.

If, however, I can impress upon the salesmen, the managers and the buyers here present what I feel—namely, that the salesman is one of the most important, if not the most important, wheels in the machinery of business—it will be a gratification to me, because a salesman must feel that he is doing an important work to meet with a full measure of success, and his employer must recognize his importance in order to deal with him in the right spirit.

GOOD SALESMANSHIP

is so essential to all lines of business, and so worthy of intelligent study and execution, that the calling, to my mind, is lifted to the dignity of a profession. First, let me say that the definitions of salesmanship which I shall offer are not my own, but quotations from what I have read; and, coming as they do from salesmen of experience who have been successful, they are entitled to respectful consideration.

Thinking it will add to their interest, I will explain that some months ago a prominent magazine devoted to the subject of advertising offered a prize of $25 for the best definition of "Salesmanship." Many replies were received, and copies of them, with the names of contestants, were placed in the hands of J. B. McMahon, vice-president and sales manager of the N. K. Fairbank Company, who consented to act as judge. He awarded the prize to the following, as embracing the most essential qualifications of a good salesman:

Salesmanship is the quality in a man—partly inherent, party acquired—whereby he is able to successfully introduce, interest in and sell a prospective customer any article or commodity.

I will quote a few others, which impressed me as being particularly good, and which I singled out of many and copied:

The ability to sell goods, or other property, in a straightforward manner, with satisfaction to all concerned and with the least expenditure of time and money, but having always chiefly in view the benefit to be derived by the person for whom the property is sold.

Another:

Salesmanship is that quality in a salesman which enables him, in the shortest space of time, to place in the possession of his customer the greatest amount of satisfactory merchandise, and in the coffers of his employers the greatest amount of profits; while at the same time preserving the lasting good will and respect of his customer.

Bear in mind, please, that a salesman is not in the salesmanship class, according to this authority, unless he can both make a profit for his employer and preserve the lasting respect and good will of the customers.

Another definition that, it seems to me, contains many good points is as follows:

Salesmanship is the science of putting into each day's work honesty in speech, loyalty to employer, the hustle of modern civilization, of watching your weak points, of strengthening them, of not only keeping your customers but gaining new ones, of being at all times a gentleman.

It has been my pleasure to meet many salesmen—in our office, during my travels, and at the jobbers' and manufacturers' conventions—and a more courteous and pleasant lot of gentlemen it has never been my pleasure to become acquainted with. It is a universally recognized fact that the standard of salesmen has been greatly elevated with the march of time—as to character, ability and intelligence—in proof of which it is not necessary to refer to any other fact than that men not possessing these qualifications cannot find room in the ranks of any reputable firm's traveling force. Furthermore, many of our largest and most successful business firms are composed of and managed by former traveling men.

I will tax your patience with one more quotation, and this one, to my mind, is as true and good as it is terse:

Salesmanship is ability to make sales; its attributes are health, honesty, courtesy, tact, resource, reserve power, facility of expression, a firm and unshakable confidence in one's self, a thorough knowledge of and confidence in the goods one is selling.

Certainly, none of us will deny that a good salesman must know his goods so well and have such confidence in them that he can convince the merchant that he needs the goods; then he must enthuse him in such a way that, after he does purchase them, he will push them.

Permit me to add that, in addition to the qualifications named in the definitions quoted, if a man is fortunate enough to possess in a marked degree the following he has, in my opinion, the qualities which go to make up what some men term a "crackerjack": Prudence, magnetism, ability to gain confidence, the art of reading human nature, judgment to comprehend a customer; in other words, the faculty of a quick perception of character.

It has been said that the eye photographs impressions on the mind instantly. Pleasing impressions are always strongest and most lasting; therefore, it is wise for the salesman to attain the strong combination of good dress and good manners, coupled with sincerity, which latter is indispensable to lasting success. A well groomed, courteous personality attracts, sincerity convinces. Cheerfulness is a valuable element in salesmanship; people like it—it appeals to them.

CREDITS.

A good judgment as regards credits, while mentioned last, is by no means the least of the desirable qualifications for salesmanship.

Competition is keen; there is a great anxiety to do business. Firms employ salesmen for that purpose, so they are anxious to make sales and make them as large as possible. It never did require much capital to start a store. A merchant should not have all his capital on his books, as he can never figure on prompt collections, but is always asked to meet his maturing bills.

It is certainly wise for the salesman to study the credit feature, to get all the information possible on the point and to impart it to his firm in detail, whether good, bad or indifferent. There is no information that a credit man values higher or that is of more assistance to him in determining upon credits, collections or extensions than that obtained from a traveling salesman. I speak from experience on this point.

Coming in personal contact with the merchant, the salesman can form an estimate of his qualifications for success, his character, ability and condition and extent of his stock, the way he handles his customers, the trade and crop conditions prevailing in the section where he does business. A knowledge of these particulars should be studiously sought after by the salesman and transmitted to the firm he represents. He should express his opinion fully and state on what he bases it. It is a fact that it is the prevailing opinion that few traveling men have the ingenuity or take the trouble necessary to equip themselves as good judges of credits. I have always asked our men to give this their best thought; a hazardous account is worse than none—to be ever watchful of a man's condition—whether it be a new customer or one of long standing, for some of our greatest losses have been with customers of long standing, whose condition has changed with time.

The value of the service of any man, be he traveler or office man, is measured by the net results of such service, and certainly the losses on a man's sales are an important factor.

Quoting from the sayings of a wise man, "The principal thing to strive for is wisdom." Next to that the thing we are all working for is the almighty dollar. The salesman is human, he wants his share, and the employer who does not cheerfully give it to him makes a mistake.

FIRST-CLASS SALESMEN NOT NUMEROUS.

Little difficulty is experienced in producing satisfactory clerks in the evolution that takes place from the time a lad begins his business experience in the position of office boy advancing in rotation—if he is of the right stuff—as vacancies in higher and more responsible positions occur. But few of them develop the characteristics and tact necessary to give them entrance into the ranks of salesmen and fewer still can ever be classed as particularly successful salesmen. We can advertise for a clerk for most any department of our business and obtain enough responses to enable us to select a suitable person.

But our experience, and that of many business men that I have spoken with on the subject is, that first-class salesmen are not so numerous and are difficult to obtain; therefore, the employer who has a satisfactory force of salesmen is to be congratulated, and it behooves him to make them satisfied as well as satisfactory.

There is no royal road to success in any vocation. Industry, capacity, power of adaptation, the ability to put forth what is in us, the faculty of utilizing our gifts will bring success. In the vast majority of failures there is a lack of motive power, a disposition to take it easy.

is not to strive for success. The qualities which bring success to men in their chosen vocations are the qualities which make it possible for such men to make their way into those vocations. The man with ability and grit will succeed. The man who does not get discouraged easily is the boss of the man who does. Enthusiasm is something that cannot be bought, because it is priceless.

Opportunities come often in disguise and disclose their possibilities only when a man has made them expand by the force of his zeal and thoroughness. It has been written that "A pound of energy with an ounce of talent will achieve greater results than a pound of talent with an ounce of energy."

TRAVELING MEN THEIR HEAVIEST EXPENSE.

Speaking for our firm, I will say the salaries and traveling expenses of our traveling men are the largest items of our annual expense account. Practically, the question of whether our business shall show a profit or a loss hinges upon that. We must rely, therefore, upon the ambition of our salesmen to lead them to make strong efforts to reach a larger volume of sales and keep their traveling expenses as low as consistent with the representation of our firm, and, as a consequence, pave the way to a better salary for themselves.

In conclusion, I will quote for the salesmen, one verse from a poem by Sabin:

Success shall come to him who waits;
But not to him of folded hands—
To him who hopes but hesitates,
And simply by the roadside stands.
Success is won by effort strong;
By unremitting, earnest stress.
The way it travels seems o'er long?
To haste its course, go meet Success.

To the employer it is not well to quote poetry—it's not what he wants. His desire is for profitable business. He can do much to help the salesman meet Success.

HOUSE MUST AID SALESMEN.

A salesman's efforts can be supplemented by the firm employing him. Proper attention and treatment of the customer by the house will certainly strengthen their position. There are so many ways. Setting aside the question of equipping a man with salable goods and proper prices, the attention an account receives by the firm in any and all of the departments of a business has a vast influence on the efforts of a salesman. Modern and thorough business methods suggest so many excellent ways of doing what is right and proper that it must be a careless man indeed who does not give this subject thought and attention.

And the house should not only give attention to those that the traveler sells, but those as well on whom he calls and does not sell. It is certainly important to give attention to prospective customers, and the firm can often put on the final touch needed to supplement the efforts of the salesman and open up a desirable account.

I have no doubt most if not all of the manufacturers here have their business so systematized as to lend every support to their salesmen, but I know of some who are not here that have not.

I will only say: The traveling salesman, if he is a gentleman and has not proven himself unworthy of your confidence, deserves courteous treatment and all the encouragement you can afford to give him. He calls on you because it is his business and, in most cases, his pleasure also. There can be cited plenty of cases in which the buyer suffered more by discourtesy than the salesman against whom it was directed, whether thoughtlessly or intentionally.

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OF THE

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